

Honorable George Miller
Chairman, House Education and Labor Committee
Statement at Full Committee Mark-up of H.R. 1644
The Re-empowerment of Skilled and Professional Employees
and Construction and Tradesworkers (RESPECT) Act
September 19, 2007

Today we will consider H.R. 1644, the *Re-empowerment of Skilled and Professional Employees and Construction and Tradesworkers* (RESPECT) Act, a bill which will make necessary modifications to the definition of supervisor under the National Labor Relations Act (NLRA). The legislation restores the fundamental right to organize to millions of hard-working Americans. It conforms the statute to common sense as well as Congress's original intent.

Since 2001, despite overall growth in the U.S. economy, American workers and their families have lost ground. Median family income actually fell by more than \$1,000 between 2000 and 2006.

To help American workers get their fair share in today's economy, we have to guarantee their rights to bargain for better wages, benefits, and working conditions. Yet for nearly seven years now, the Bush administration has taken every conceivable opportunity to undermine workers' basic rights, including the fundamental rights to organize and bargain collectively.

In a particularly egregious assault on workers' rights, the Bush National Labor Relations Board last year issued a trio of decisions, collectively known as the "Kentucky River" decisions, that stripped millions of American workers of their rights to belong to unions and bargain for better wages, benefits, and working conditions.

In the Kentucky River cases, denying these rights to workers was as simple as changing the definition of the word “supervisor.”

Most of us here – and most workers – have a clear understanding of who is and who is not a supervisor. A supervisor has the power to discipline, reward, promote, hire, and fire employees. Under the National Labor Relations Act, which protects the rights of employees to organize and bargain collectively, supervisors are not considered employees. Understanding that a supervisor acts as an agent of the employer, it was the intent of Congress to exclude from its protections only genuine supervisors.

A majority of the members on the Bush NLRB voted to broaden the definition of supervisor in order to exempt more workers from the law’s protections. Flying in the face of common sense and basic fairness, the NLRB decided that skilled and professional workers who might direct a co-worker on a single, discrete task just 10 percent of the workday are actually supervisors, despite the fact that they have no authority to discipline, reward, promote, hire, or fire employees.

For example, because of the NLRB’s decisions, hospitals may now decide that all of their charge nurses should be viewed as supervisors because they fill out schedules and sometimes provide direction to less highly skilled nurses, even though they lack the power to hire, fire, promote, discipline, or reward their coworkers.

The damage from the Board’s decisions is real. Already, the effects are being felt. In a case out of Salt Lake City, where a regional director of the NLRB has applied the Board’s new rule, the regional director ruled that 64 out of 88 registered nurses attempting to organize were supervisors unprotected by the Act. Moreover, the director found that the remaining 24 nurses were non-supervisory employees only because they had less than one

year's service. Eventually, all the RN's at this hospital would be supervisors, supervising each other, without any right to organize or collectively bargain. In radically broadening the definition of supervisor, the Board has given employers an easy road map to strip virtually any employee of his or her fundamental rights under federal labor law.

The impact of these Kentucky River decisions will be felt far and wide, particularly among professional and skilled workers who often assign or direct lesser skilled or lesser experienced aides, assistants, and apprentices.

By 2012, according to the dissent in one of these cases, some 34 million Americans may lose the freedom to organize because of the Board's rulings.

Prior to the rulings, based on what the employer parties to these cases were seeking, the Economic Policy Institute estimated that 8 million current workers would lose their rights because of the employer-sought rule.

The RESPECT Act will make two simple and clarifying changes to the definition of supervisor under the NLRA to ensure that only true supervisors are classified as such under the law.

First, it will eliminate the terms "assign" and "responsibility to direct" from the list of supervisory duties. This would clarify, for example, that construction workers who often assign tasks to and direct the work of less-skilled and less-experienced workers, but who have no actual supervisory authority, are not supervisors.

Second, the legislation will require that employees possess supervisory duties during the majority of their work time in order to be excluded from coverage under the legislation as a supervisor. Employees who spend the majority of their time as employees, without any true supervisory authority, should have the right to

organize. Rotating an employee into a supervisory role once or twice a week should not render that employee unprotected.

The RESPECT Act creates a fair, bright-line rule when determining if an individual is a supervisor. The legislation ensures that the supervisor definition is not misinterpreted, manipulated, or undermined on this fundamental question of coverage.

Recent efforts by the Board to exclude large groups of people from NLRA protections are unconscionable. Hard-working Americans who lack any supervisory authority and control must be allowed to exercise the rights that are afforded them under the law. The RESPECT Act restores the law to what it was before the Board's decisions. In so doing, it returns the right to have a seat at the bargaining table to millions of American workers.

For far too long, American workers have not gotten their fair share of the benefits of their hard work. Restoring workers' rights to bargain for better wages and benefits is essential if we want to ensure that all families can get ahead in today's economy.

I want to thank my colleague, Chairman Rob Andrews, for sponsoring the RESPECT ACT and for holding a hearing on the bill in the Committee's HELP subcommittee. I also want to thank Senator Chris Dodd for sponsoring the RESPECT Act in the Senate and for all of his efforts to move this legislation forward.

The Respect Act has 117 co-sponsors. I am proud to be one of them.

I urge my colleagues to support this legislation.